

The fact that such a practice pertains to farming operations generally or to those performed on a number of farms, rather than to those performed on the same farm only, is sufficient to take it outside the scope of the statutory language. Area soil surveys and genetics research activities, results of which are made available to a number of farmers, are typical of the practices to which this principle applies and which are not within section 3(f) under this provision.

**§ 780.142 Practices on a farm not related to farming operations.**

Practices performed on a farm in connection with nonfarming operations performed on or off such farm do not meet the requirement stated in § 780.141. For example, if a farmer operates a gravel pit on his farm, none of the practices performed in connection with the operation of such gravel pit would be within section 3(f). Whether or not some practices are performed in connection with farming operations conducted on the farm where they are performed must be determined with reference to the purpose of the farmer for whom the practice is performed. Thus, land clearing operations may or may not be connected with such farming operations depending on whether or not the farmer intends to devote the cleared land to farm use.

**§ 780.143 Practices on a farm not performed for the farmer.**

The fact that a practice performed on a farm is not performed by or for the farmer is a strong indication that it is not performed in connection with the farming operations there conducted. Thus, where such an employer other than the farmer performs certain work on a farm solely for himself in furtherance of his own enterprise, the practice cannot ordinarily be regarded as performed in connection with farming operations conducted on the farm. For example, it is clear that the work of employees of a utility company in trimming and cutting trees for power and communications lines is part of a nonfarming enterprise outside the scope of agriculture. When a packer of vegetables or dehydrator of alfalfa buys the standing crop from the farmer, harvests it with his own crew of em-

ployees, and transports the harvested crop to his off-the-farm packing or dehydrating plant, the transporting and plant employees, who are not engaged in "primary" agriculture as are the harvesting employees (see *NLRB v. Olaa Sugar Co.*, 242 F. 2d 714), are clearly not agricultural employees. Such an employer cannot automatically become an agricultural employer by merely transferring the plant operations to the farm so as to meet the "on a farm" requirement. His employees will continue outside the scope of agriculture if the packing or dehydrating is not in reality done for the farmer. The question of for whom the practices are performed is one of fact. In determining the question, however, the fact that prior to the performance of the packing or dehydrating operations, the farmer has relinquished title and divested himself of further responsibility with respect to the product, is highly significant.

**PERFORMANCE OF THE PRACTICE "AS AN INCIDENT TO OR IN CONJUNCTION WITH" THE FARMING OPERATIONS**

**§ 780.144 "As an incident to or in conjunction with" the farming operations.**

In order for practices other than actual farming operations to constitute "agriculture" within the meaning of section 3(f) of the Act, it is not enough that they be performed by a farmer or on a farm in connection with the farming operations conducted by such farmer or on such farm, as explained in §§ 780.129 through 780.143. They must also be performed "as an incident to or in conjunction with" these farming operations. The line between practices that are and those that are not performed "as an incident to or in conjunction with" such farming operations is not susceptible of precise definition. Generally, a practice performed in connection with farming operations is within the statutory language only if it constitutes an established part of agriculture, is subordinate to the farming operations involved, and does not amount to an independent business. Industrial operations (*Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398) and processes that are more akin to manufacturing than to agriculture (*Maneja v.*

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*Waialua*, 349 U.S. 254; *Mitchell v. Budd*, 350 U.S. 473) are not included. This is also true when on-the-farm practices are performed for a farmer. As to when practices may be regarded as performed for a farmer, see § 780.143.

### **§ 780.145 The relationship is determined by consideration of all relevant factors.**

The character of a practice as a part of the agricultural activity or as a distinct business activity must be determined by examination and evaluation of all the relevant facts and circumstances in the light of the pertinent language and intent of the Act. The result will not depend on any mechanical application of isolated factors or tests. Rather, the total situation will control (*Maneja v. Waialua*, 349 U.S. 254; *Mitchell v. Budd*, 350 U.S. 473). Due weight should be given to any available criteria which may indicate whether performance of such a practice may properly be considered an incident to farming within the intent of the Act. Thus, the general relationship, if any, of the practice to farming as evidenced by common understanding, competitive factors, and the prevalence of its performance by farmers (see § 780.146), and similar pertinent matters should be considered. Other factors to be considered in determining whether a practice may be properly regarded as incidental to or in conjunction with the farming operations of a particular farmer or farm include the size of the operations and respective sums invested in land, buildings and equipment for the regular farming operations and in plant and equipment for performance of the practice, the amount of the payroll for each type of work, the number of employees and the amount of time they spend in each of the activities, the extent to which the practice is performed by ordinary farm employees and the amount of interchange of employees between the operations, the amount of revenue derived from each activity, the degree of industrialization involved, and the degree of separation established between the activities. With respect to practices performed on farm products (see § 780.147) and in the consideration of any specific practices (see §§ 780.148–780.158 and

780.205–780.214), there may be special factors in addition to those above mentioned which may aid in the determination.

### **§ 780.146 Importance of relationship of the practice to farming generally.**

The inclusion of incidental practices in the definition of agriculture was not intended to include typical factory workers or industrial operations, and the sponsors of the bill made it clear that the erection and operation on a farm by a farmer of a factory, even one using raw materials which he grows, “would not make the manufacturing \* \* \* a farming operation” (see 81 Cong. Rec. 7658; *Maneja v. Waialua*, 349 U.S. 254). Accordingly, in determining whether a given practice is performed “as an incident to or in conjunction with” farming operations under the intended meaning of section 3(f), the nature of the practice and the circumstances under which it is performed must be considered in the light of the common understanding of what is agricultural and what is not, or the facts indicating whether performance of the practice is in competition with agricultural or with industrial operations, and of the extent to which such a practice is ordinarily performed by farmers incidentally to their farming operations (see *Bowie v. Gonzales*, 117 F. 2d 11; *Calaf v. Gonzalez*, 127 F. 2d 934; *Vives v. Seralles*, 145 F. 2d 552; *Mitchell v. Hunt*, 263 F. 2d 913; *Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398; *Mitchell v. Budd*, 350 U.S. 473; *Maneja v. Waialua*, supra). Such an inquiry would appear to have a direct bearing on whether a practice is an “established” part of agriculture. The fact that farmers raising a commodity on which a given practice is performed do not ordinarily perform such a practice has been considered a significant indication that the practice is not “agriculture” within the secondary meaning of section 3(f) (*Mitchell v. Budd*, supra; *Maneja v. Waialua*, supra). The test to be applied is not the proportion of those performing the practice who produce the commodities on which it is performed but the proportion of those producing such commodities who perform the practice (*Maneja v. Waialua*, supra). In *Mitchell v. Budd*, supra, the U.S. Supreme Court